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Paper for the House Committee

**Report of the Subcommittee on Antiquities and Monuments
(Declaration of Historical Buildings) (No. 2) Notice 2013**

Purpose

This paper reports on the deliberations of the Subcommittee on Antiquities and Monuments (Declaration of Historical Buildings) (No. 2) Notice 2013.

Background

2. Under section 3(1) of the Antiquities and Monuments Ordinance (Cap. 53) ("the Ordinance"), the Secretary for Development ("SDEV") as the Antiquities Authority ("AA") may, after consultation with the Antiquities Advisory Board ("AAB") and with the approval of the Chief Executive, by notice in the Gazette, declare any place, building, site or structure, which he considers to be of public interest by reason of its historical, archaeological or palaeontological significance, to be a monument, historical building or archaeological or palaeontological site or structure. Once so declared, the place, building, site or structure in question will become a "monument" for the purposes of the Ordinance and as such will enjoy the protection under section 6(1) which forbids anyone to excavate, carry on building or other works, plant or fell trees or deposit earth or refuse on or in the monument, or demolish, remove, obstruct, deface or interfere with it except in accordance with a permit granted by SDEV. Under section 19(2) of the Ordinance, any person who contravenes section 6(1) shall be guilty of an offence and shall be liable on conviction to a fine of \$100,000 and imprisonment for one year.

Antiquities and Monuments (Declaration of Historical Buildings) (No. 2) Notice 2013 (L.N. 206 of 2013)

3. The Antiquities and Monuments (Declaration of Historical Buildings) (No. 2) Notice 2013 (L.N. 206 of 2013) ("the Declaration Notice") was made by SDEV under section 3(1) of the Ordinance to declare the following to be historical buildings¹ --

- (a) Fat Tat Tong (發達堂) at 1-5 Ha Wo Hang, Sha Tau Kok, New Territories; and
- (b) Tat Tak Communal Hall (達德公所) at Ping Shan, Yuen Long, New Territories².

Fat Tat Tong

4. According to the Legislative Council ("LegCo") Brief on the Declaration Notice, Fat Tat Tong, built in 1933, is a testimony of the history of a renowned Hakka family in Wo Hang area and also a typical example of residences of eclectic style popular with the returned overseas Chinese in the early 20th century in the territory. Original building layout and some historic features and relics of the residence are well preserved. Few alterations appear to have been carried out since its construction.

Tat Tak Communal Hall

5. Tat Tak Communal Hall is the only remaining purpose-built communal hall in Hong Kong which served as an assembling cum worshipping place for a joint village alliance and a management office of an open market. The communal hall was built in 1857 by Tang Fan-yau, a gentry of Ping Shan, and his clansmen as an assembling place for village guards and members of Tat Tak Alliance, as well as the management office of Ping Shan Shi. Western architectural elements are found in the communal hall. The original building form and some decorative features of the communal hall are still visible. Some of the significant architectural heritage assets of the building are still retained.

¹ Under section 2 of the Ordinance, "historical building" is a type of "monument".

² A copy of the plans showing the locations of the buildings declared by AA as historical buildings under the Declaration Notice (and deposited in the Land Registry as Plans Nos. DNM2872a and YLM8035a) is given at Annex C to the Legislative Council Brief on the Declaration Notice (File Ref: DEVB/CHO/1B/CR141) issued by the Development Bureau on 20 December 2013.

6. Fat Tat Tong and Tat Tak Communal Hall have been accorded with a Grade 1 status by the AAB having regard to the recommendations of an independent assessment panel³ under the existing administrative grading mechanism⁴. Paragraph 21 of the LegCo Brief states that the AAB, which was consulted on the proposed declaration as required under section 3(1) of the Ordinance on 20 February 2013 and 17 April 2013, rendered its support to the declaration.

7. According to paragraph 18 of the LegCo Brief, the Antiquities and Monuments Office ("AMO") completed the procedure of serving a notice to the owners and any lawful occupiers of the buildings on private land (viz. Fat Tat Tong and Tat Tak Communal Hall) of the intended declaration, as required under section 4 of the Ordinance, on 9 April 2013 and 18 September 2013 respectively. No objection was received by AMO during the one-month notice period. Explicit agreement of the owners of the two buildings to the declaration proposal has also been obtained.

8. The Declaration Notice does not provide for a commencement date. By virtue of section 20(2) of the Interpretation and General Clauses Ordinance (Cap. 1), the Declaration Notice commenced on the day it was published in the Gazette, i.e. 27 December 2013.

The Subcommittee

9. At the House Committee ("HC") meeting on 3 January 2014, members agreed to form a subcommittee to study the Declaration Notice. Dr Hon KWOK Ka-ki was elected Chairman of the Subcommittee. The membership list of the Subcommittee is in the **Appendix**.

10. To allow time for the Subcommittee to report its deliberations to the HC and Members to study the Declaration Notice, a resolution was passed at the Council meeting of 22 January 2014 to extend the scrutiny period to 26 February 2014. The Subcommittee held two meetings with the Administration to examine the Declaration Notice.

³ The assessment panel comprises experts from the fields of town planning, architecture and engineering as well as historians.

⁴ Grading of historic buildings is accorded by the AAB as follows --

Grade 1	Buildings of outstanding merit, which every effort should be made to preserve if possible.
Grade 2	Buildings of special merit; efforts should be made to selectively preserve.
Grade 3	Buildings of some merit; preservation in some form would be desirable and alternative means could be considered if preservation is not practicable.

Deliberations of the Subcommittee

11. In recognition of the historical merits and architectural values of Fat Tat Tong and Tat Tak Communal Hall, members of the Subcommittee generally welcome and support the declaration of these two buildings as historical buildings under section 3(1) of the Ordinance.

12. In the course of deliberations, members have raised concerns on the arrangements for public access to Fat Tat Tong, which is still being used as a residence, conservation of the neighbourhood of historical buildings, and preservation of heritage at Ping Shan. The deliberations of the Subcommittee are summarized in the ensuing paragraphs.

Public access to Fat Tat Tong

13. The Subcommittee notes that Fat Tat Tong was built as a private residence by a trustee called Li To Wan Tso (李道環祖), which was formed by the four sons of Li To-wan (李道環) in the 1930s. Fat Tat Tong is currently used as a residence for the descendants of Li To-wan and is the first statutory historical building which is still being used for residential purposes. As the Administration will undertake one-off restoration works at an estimated cost of \$8 million and subsequent maintenance works at around \$0.2 million per annum for Fat Tat Tong, members consider that, to justify the public expenditure, it is important for the Administration to ensure that the public will be allowed to visit the building to appreciate its heritage features, with docent services provided, on a regular and long-term basis.

14. The Administration has advised that a written consent from the owners indicating their agreement to the opening of the building for public viewing after restoration has been obtained. AMO has further written to the owners proposing the detailed arrangements, including the opening hours, for public access to the common areas of the building. The details will be finalized with the owners before the Administration commences the restoration works for Fat Tat Tong.

15. The Chairman and members including Hon MA Fung-kwok, Hon CHAN Yuen-han, Hon YIU Si-wing and Hon SIN Chung-kai are concerned that a written consent from the owners of Fat Tat Tong might not have the legal effect to guarantee that they and their descendants will allow, on a permanent basis, public access to the building. Hon YIU Si-wing and Hon SIN Chung-kai have suggested that the Administration should sign a legally binding memorandum or management agreement with the

owners on the opening arrangement. In case that the owners breach the agreement, the Administration could consider taking legal actions for redress. The Chairman has suggested that, to make use of public funds in a prudent manner and to provide an incentive to the owners of Fat Tat Tong in opening the building for public access, the costs of restoration and maintenance works for the building might be arranged as a loan to the owners. The owners would be required to repay the loan to the Administration, should they not honour the opening arrangement.

16. The Administration has explained that monument declaration and allowing public access to the building are two separate matters. Public access is not a prerequisite for monument declaration under the Ordinance. The declaration of a privately-owned building as a monument will not automatically give the general public a right of public access. However, once a building is declared a monument, it will be subject to permanent statutory protection and be preserved. In many cases, the public can also benefit and enjoy the monuments through appreciating their appearances from publicly accessible points. The Administration has stressed that the purpose for undertaking restoration and maintenance works for monuments with public money is to arrest the monuments from deterioration so that they will be preserved in a satisfactory condition for public benefit, not for the owners' benefits. AMO will appoint contractors to carry out the works instead of providing funds to the owners.

17. The Administration has highlighted that the owners of Fat Tat Tong have rendered great support to heritage conservation by agreeing to subject the building to permanent statutory protection and control through monument declaration, which will obviate any possibility of redeveloping the building. It will be difficult, if not impossible, to require owners of monuments to give up the redevelopment right as well as to shoulder the restoration and maintenance costs. As to whether monuments can be opened up for public access, it has to be decided on a case-by-case basis and the arrangements have to be worked out with the support and cooperation of the owners concerned.

18. Some members, including the Chairman, have asked whether the Administration would consider acquiring Fat Tat Tong to facilitate public access to and appreciation of the historical building. The Chairman has cited as an example the case of Kom Tong Hall, which was acquired by the Administration in 2004 at a price of \$53 million and converted into the Dr Sun Yat-sen Museum, after the original owner had submitted a plan to demolish the building.

19. The Administration has explained that it is the Government's policy objective to strike a proper balance between respect for private property rights and heritage conservation. Declaring a building a monument does not change the ownership of the building. The Administration has explained that it has been encouraging private owners to preserve the monuments / historic buildings under their ownership. It is only under very special circumstances, such as when monuments / historic buildings are under demolition threat, would the Administration consider obtaining the owners' agreement to hand over their monuments / historic buildings through land exchange. The Administration has stressed that using public money to purchase monuments is a controversial issue which has not yet had wide public support. It is also one of the issues to be studied in a policy review on the conservation of Hong Kong's built heritage being undertaken by the Development Bureau with the assistance of the AAB. From the heritage conservation perspective, the best use of a monument / historic building is the use it was designed for. Therefore, retaining the original use of Fat Tat Tong by the descendants of the original owners, instead of acquiring the ownership of Fat Tat Tong by the Administration and artificially putting Fat Tat Tong into a new use, is considered more preferable from the heritage conservation perspective.

20. While the Subcommittee has no objection to the declaration of Fat Tat Tong as a monument, some members consider that the Administration has not taken effective measures to ensure that public access to Fat Tat Tong will be allowed on a permanent basis, albeit the plan to spend public money on the restoration and maintenance of the building. The Chairman holds the view that the Administration has adopted a close-minded attitude to members' suggestions on resolving the issue.

Conservation of the neighbourhood of historical buildings

21. The Subcommittee is concerned that under the existing Ordinance, each and every building, structure, place or site declared a monument has to meet the historical significance criterion. The emphasis is on 'dot' (i.e. a building), rather than 'line' (i.e. a street) or 'plane' (i.e. an area). This has made it difficult, if not impossible, to conserve a whole street or neighbourhood for the purpose of conservation.

22. In this connection, the Chairman has pointed out that some graded historic buildings near the Ping Shan Heritage Trail ("the Trail") are in dilapidated conditions and some open areas near the Trail have been used as car parks. He calls on the Administration to enhance the conservation of graded historic buildings at Ping Shan as well as the planning of the area

to enhance visitors' experience at the traditional Chinese buildings along the Trail and enable them to learn more about the traditional life in the New Territories.

23. Hon CHAN Yuen-han holds the view that a holistic approach (i.e. the dot-line-plane approach) should have been adopted by the Administration in taking forward the policy on built heritage conservation. The Administration should make good use of the characteristics of a particular area and deploy sufficient resources for implementing conservation projects in those areas. In the absence of a single bureau to oversee the planning and implementation of heritage conservation work for the purposes of enhancing the environment in the areas surrounding the built heritage, developing public spaces for community enjoyment and creating a positive impact on the tourism and travel industry, there is an urgent need for the Administration to take a proactive approach in addressing this long-standing problem.

24. The Administration has advised that the adoption of the dot-line-plane approach in heritage conservation is being reviewed by the Development Bureau in collaboration with the AAB. The review covers preservation of privately-owned historic buildings, conservation of larger areas and facilitation of public appreciation of historic buildings, etc. In this connection, the Subcommittee has invited the Chairman of the AAB to attend its meeting to exchange views on the related matters. In reply, the AAB advised that as the policy review is still ongoing, it would not be appropriate for the AAB to brief members on the review at this juncture. The AAB has also advised that it will submit a report to the Administration upon completion of the review and will brief the LegCo Members on the report.

25. In view of the deficiencies in the existing policy on built heritage conservation and the lack of coordination in the Administration for taking forward the related policies, the Subcommittee urges the Chief Secretary for Administration to coordinate the relevant bureaux/departments to formulate a more comprehensive built heritage conservation policy and enhance the conservation work. The Subcommittee recommends that the Chairman of HC be requested to convey members' concerns on the related matters to the Chief Secretary for Administration for her attention and necessary action.

Preservation of heritage at Ping Shan

26. The Subcommittee has queried why Tat Tak Communal Hall can only be included in the Trail by 2016. The Administration has explained that since its inauguration in 1993, the Trail had linked up a number of built heritage after the Administration had obtained consent from their owners to open the buildings for public access. Since the repair works for Tat Tak Communal Hall have to take about two years for completion, it would only be included as one of the attractions along the Trail in 2016 to ensure that the building is structurally safe and the heritage features are restored for public visits.

Recommendation

27. The Subcommittee has completed the scrutiny of and supports the Declaration Notice. On behalf of the Subcommittee, Hon Gary FAN Kwok-wai gave a verbal report of the deliberations of the Subcommittee at the HC meeting held on 7 February 2014.

Advice sought

28. Members are requested to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
18 February 2014

Appendix

Subcommittee on Antiquities and Monuments (Declaration of Historical Buildings) (No. 2) Notice 2013

Membership list

Chairman Dr Hon KWOK Ka-ki

Members Hon Abraham SHEK Lai-him, GBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan, JP
Hon YIU Si-wing
Hon Gary FAN Kwok-wai
Hon MA Fung-kwok, SBS, JP
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon CHAN Yuen-han, SBS, JP
Hon SIN Chung-kai, SBS, JP

(Total : 11 members)

Clerk Mr Anthony CHU

Legal Adviser Ms Clara TAM